IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11608 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANSARI SAMEENA BANU ZAINULABE-DIN - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MUKESH N PATEL for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1-3,
MRS VD NANAVATI for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/07/2006

ORAL JUDGMENT

1. Rule. Learned AGP Shri Gori wavies service of Rule on behalf of respondent nos.1 and 3. Learned advocate Mrs. V.D. Nanavati wavies service of rule on behalf of respondent no.2.

2. At the request of learned advocates appearing for the parties and considering the urgency in the issue this petition is taken up for final disposal today.

3. The petitioner had applied for admission to B.Ed Course in Urdu medium on the basis of her graduation examination result. Respondent no.2 was monitoring the grading of admissions. Before the respondent no.2 the petitioner had contended that she belongs to a Socially and Educationally Backward Class (SEBC in short). The petitioner had also produced a certificate to that effect dated 24th February, 2000 issued by the Competent Authority under the State Government. The admission was granted to the petitioner provisionally pending verification of the cast certificate. The admission was granted to the petitioner in March, 2006.

4. The petitioner filed the present petition on the apprehension that her admission will be cancelled. The petitioner gathered this impression since the petitioner feared that the authorities would cancel her caste certificate. The petitioner, therefore, approached this Court and sought interim direction. This Court had while issuing notice on 15th June, 2006

protected the petitioner against cancellation of her admission.

5. In response to the notice issued the State Government as well as the respondent no.2 committee had appeared through their learned advocates.

6. Shortly stated the case of the State Government is that the petitioner had obtained the caste certificate on the basis of certain information and material supplied by her. Upon verification it was found that the same was not accurate. Therefore, after hearing the petitioner the caste certificate was cancelled by a speaking order dated 20th June, 2006. A copy of the said order is produced on record. On the basis of the said order learned AGP Shri Gori pointed out that the petitioner herself had indicated before the authorities that she has no material in addition to what was already supplied by her earlier to establish her claim of belonging to Julay community which would qualify for SEBC status. Considering the material on record the competent authority was of the opinion that the petitioner belonged to Ansari community and the caste certificate was, therefore, required to be cancelled.

7. On the basis of the above cancellation of the caste certificate the representation of the respondent no.2 before the Court was that the petitioner applied for the B.Ed seat on the basis of her caste certificate. She was, therefore, granted

admission on SEBC seat. Subsequently, when it is found that the certificate is cancelled, her admission which was otherwise provisional should be permitted to be cancelled as well. It is contended that the petitioner was at serial no. 5 in the merit list. At the time of counselling, she sought admission as a candidate belonging to SEBC category. She now, therefore, cannot retain her admission and switch over to general category seat since the admission process is already over long back.

8. Having examined the material on record and having heard learned advocates appearing for the parties, I find that the petitioner though had applied for B.Ed course in Urdu medium with caste certificate of SEBC, independently of such reserved category seat also, the merit marks of the petitioner warranted her admission to the course in question even on open category seat. In fact this is not much in dispute. Besides the clear admission, in the affidavit in reply filed by respondent no.2 that the petitioner was placed at serial no.5 in the merit list, there is no dispute raised against the averments of the petitioner that she was assigned 72% merit marks and candidates belonging to open category having less marks then that were admitted to the course. This would, therefore, demonstrate that irrespective of the reservation the petitioner was entitled to receive admission in the open category as well. The averment in the affidavit in reply that at the time of counselling the petitioner opted to avail SEBC seat and that, therefore, now cannot be

considered on the general category seat is legally not sustainable. Firstly, a person belonging to a reserved category cannot be kept out of consideration for open category seats if his or her merit marks so warrant. Additionally, such open category seat occupied by a reserved category candidate can also not count towards a reserved quota seat. This much is amply clear and well laid down in the case of R.K.Sabharwal and Ors. vs. State of Punjab and Ors. Reported reported in (1995) 2 SCC 745. It would, therefore, appear that even if the petitioner had requested for being considered as SEBC candidate, the authorities could not have accepted such a assertion since by that process a seat in favour of reserved category candidate was getting eliminated.

8.1 The problem can be looked from a different angle. The petitioner had produced a caste certificate. It is not the allegation of the authorities atleast as of now that the same was obtained through fraud. It may be that the petitioner failed to substantiate her claim and upon closer scrutiny the authorities found that she belonged to Ansari community and Julay community. That may though justify cancellation of the caste certificate, would not be sufficient to disable the petitioner from seeking her admission on the open category seat if she was otherwise meritorious. From the beginning the authorities erred in adjusting the petitioner against SEBC seat when the petitioner's merit marks permitted her to compete in the open category and secure admission for herself without

availing of reservation.

9. In view of the above discussion, I find that the admission of the petitioner cannot be cancelled despite cancellation of her caste certificate. The petitioner has been occupying the seat in B.Ed category. Even after cancellation of caste certificate as per her merit marks she deserves admission in open category. By this notional adjustment the petitioner is not snatching away admission of any open category student having more merits than her. In view of the above discussion, I find that the petition is required to be allowed. The respondents are prevented from cancelling the admission of the petitioner.

10. Before concluding two aspects of the matter require clarification. Firstly, this Court has expressed no opinion on the manner in which the petitioner has obtained the caste certificate and it will be open for the respondents to inquire further into it. Secondly, the above discussion and conclusions are based on the fact situation that there was only one institution offering admission in B.Ed course in Urdu medium and that, therefore, there was no question of multiple choice before the candidates. In that view of the matter, the question of the petitioner opting to occupy a reserved category seat or general category seat becomes inconsequential. It is in this back ground this Court has given the above decision. Perhaps the situation would take a different turn if there are multiple

choices of institutions, courses or fee structure. I express no opinion on that aspect of the matter.

11. Subject to above observations, the petition is allowed. Rule is made absolute. No costs.

12. Direct service permitted.

(Akil Kureshi, J.)

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